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Miki ak Jinop (f) v Septimus Amit ak Miaw

B HIGH COURT (KUCHING) — KCH-22NCvC-2/1 OF 2015
RHODZARIAH BUJANG J
13 DECEMBER 2016

C *Native Law and Custom — Land dispute — Customary rights over land — Plaintiff sued defendant for 1/7 share in land under defendant's name which land used to belong to defendant's grandfather cum plaintiff's great grandfather — Whether concept of 'nguai' applicable to plaintiff's mother — Whether concept of 'lanting' as enacted under s 183 of Adat Iban Order 1993 applicable to*
D *defendant — Whether plaintiff had legal capacity to claim for 1/7 share of land — Adat Iban Order 1993 s 183 — Administration of Estates Ordinance 1948 s 17 — Evidence Act 1950 s 101(1)*

The plaintiff sued the defendant for a 1/7 share in a parcel of land held under
E the defendant's name described as Lot 412, Block 10, Gading-Lundu Land District ('Lot 412') which land used to belong to the defendant's grandfather cum the plaintiff's great grandfather named Sileng ak Merai ('Sileng'). It must be noted that the plaintiff's mother named Kosit and the defendants were siblings. The parties had each called a witness on what the Iban customs says
F about the entitlement to land. The plaintiff called one Gungoi ak Joll who was the Ketua Kaum or Headman of Kampung Sebemban whereas the defendant called one Nicholas Bawaing ak Anggat, the Deputy President of Majlis Adat Istiadat Sarawak. Both the witnesses discussed on two customary concepts of the Ibans which were 'nguai' and 'lanting'. The defendant submitted that under
G Iban custom, only he was entitled to inherit Sileng's properties because he cared for Sileng in his old age up till Sileng's death in 1967. The defendant further submitted that the plaintiff had not discharged the burden of proof under s 101(1) of the Evidence Act 1950.

H **Held,** allowing the plaintiff's claim with costs of RM10,000 subject to payment of the allocatur fee:

(1) Based on the facts of the case, it was obvious that 'nguai' was not applicable to Kosit because she did not stay with her husband's family
I after marriage and neither did the plaintiff after her marriage. The evidence showed that each one of them stayed on their own with their respective spouses. What was even more telling of her attachment to her village was that she had built a house on Lot 412. This house was evidence

of an intention to reside in the village and was the evidence which strengthen the court's view that Kosit did not 'nguai' when she married her husband (see para 9).

(2) In order for 'lanting' to operate in favour of a person or rather the defendant in the present case, the pre-requisite of an announcement of such a bequest by the owner of the property made in favour of a particular beneficiary or beneficiaries must be made before the village elders or headman. That announcement may or may not be recorded in writing but it must be made. In the present case, defendant had failed in his defence of the plaintiff's claim because he had not adduced an iota of evidence to show compliance with the pre-requisite of 'lanting' (see para 18).

(3) The defendant had failed to prove his defence on a balance of probability. The plaintiff, on the other hand had discharged that burden in the presence of the undisputed facts that Sileng died intestate and that her late mother Kosit was one of his grandchildren who had built a house on Lot 412 and with the defendant's full knowledge and concurrence. Given that familial relationship between the parties, Kosit as too her other siblings and the defendant of course all had beneficial interest in Sileng's estate. The plaintiff, being the administratrix of Kosit's estate therefore had the legal capacity to mount a claim on that part of Lot 412 where Kosit had built her house (see para 19).

(4) Since it was clearly stated in the intitulement of the action that the plaintiff was suing on behalf of the estate of her late mother Kosit and that the subject matter of the action was Lot 412 and s 17 of the Administration of Estates Ordinance 1948, the court held that the first prayer made in the alternative in the amended pleading was a fair and equitable one to make ie that the estate of Kosit was entitled to the 1/7 share of the land and the estate of Kosit's entitlement of 1/7 share was equivalent to 46 points and be measured or determined with the plaintiff's house as epicenter (see para 23).

[Bahasa Malaysia summary

Plaintif telah menyaman defendan untuk 1/7 bahagian dalam sebidang tanah yang dipegang di bawah nama defendan yang dikenali sebagai Lot 412, Blok 10, Daerah Tanah Gading-Lundu ('Lot 412') yang mana tanah itu sebelum itu dimiliki oleh datuk defendan iaitu moyang plaintif bernama Sileng ak Merai ('Sileng'). Ia perlu diambil perhatian bahawa ibu plaintif bernama Kosit dan defendan-defendan adalah adik-beradik. Pihak-pihak telah masing-masing memanggil seorang saksi berhubung apa yang dikatakan oleh adat Iban tentang hak ke atas tanah. Plaintif telah memanggil Gungoi ak Joll yang merupakan Ketua Kaum Kampung Sebemban di mana defendan telah memanggil Bawaing ak Anggat, Timbalan Presiden Majlis Adat Istiadat

Sarawak. Kedua-dua saksi telah membincangkan tentang dua konsep adat Iban iaitu 'nguai' dan 'lanting'. Defendan berhujah bahawa di bawah adat Iban, hanya dia berhak untuk mewarisi hartanah Sileng kerana dia telah menjaga Sileng dalam usia tuanya sehingga Sileng meninggal dunia pada 1967. Defendan selanjutnya berhujah bahawa plaintif tidak melepaskan beban bukti di bawah s 101(1) Akta Keterangan 1950.

Diputuskan, membenarkan tuntutan plaintif dengan kos RM10,000 tertakluk kepada bayaran yuran alokatur:

(1) Berdasarkan fakta kes, ia jelas bahawa 'nguai' tidak terpakai kepada Kosit kerana dia tidak tinggal bersama keluarga suamiya selepas berkahwin dan begitu juga dengan plaintif selepas perkahwinannya. Keterangan menunjukkan bahawa setiap seorang daripada mereka telah tinggal sendiri dengan pasangan masing-masing. Apa yang lebih nyata tentang kaitannya dengan kampungnya adalah bahawa dia telah membina sebuah rumah atas Lot 412. Rumah ini adalah keterangan tentang niat untuk tinggal di kampung itu dan adalah keterangan yang mengukuhkan pandangan mahkamah bahawa Kosit tidak 'nguai' apabila dia berkahwin dengan suaminya (lihat perenggan 9).

(2) Bagi tujuan 'lanting'; beroperasi menyebelahi seseorang atau lebih tepat defendan dalam kes ini, prasyarat pengumuman wasiat oleh pemilik hartanah tersebut yang dibuat menyebelahi benefisiari tertentu atau benefisiari-benefisiari perlu dbuat di hadapan ketua kampung. Pengumuman tersebut boleh atau tidak boleh direkod secara bertulis tetapi ia perlu dibuat. Dalam kes ini, defendan telah gagal dalam pembelaannya terhadap tuntutan plaintif kerana dia tidak mengemukakan apa-apa keterangan untuk menunjukkan ketidakpatuhan dengan prasyarat 'lanting' (lihat perenggan 18).

(3) Defendan telah gagal untuk membuktikan pembelaannya atas imbangan kebarangkalian. Plaintif, sebaliknya telah melepaskan beban tersebut dengan kewujudan fakta yang tidak dipertikaikan bahawa Sileng meninggal dunia berwasiat dan bahawa mendiang ibunya Kosit adalah salah seorang daripada cucunya yang telah membina rumah atas Lot 412 dan dengan pengetahuan dan persetujuan penuh defendan. Berdasarkan hubungan kekeluargaan antara pihak-pihak tersebut, Kosit dan juga adik-beradiknya dan defendan sememangnya semua mempunyai kepentingan benefisiari dalam harta pusaka Sileng. Plaintif, sebagai pentadbir harta pusaka Kosit dengan itu mempunyai kapasiti yang sah untuk membuat tuntutan terhadap bahagan Lot 412 di mana Kosit telah membina rumahnya (lihat perenggan 19).

(4) Oleh kerana ia jelas dinyatakan dalam tajuk tindakan bahawa plaintif menyaman bagi pihak harta pusaka mendiang ibunya Kosit dan bahawa hal perkara tindakan adalah Lot 412 dan s 17 Ordinan Pentadbiran dan

Harta Pusakan 1948, mahkamah memutuskan bahawa permohonan pertama dibuat secara alternatif dalam pliding yang dipinda adalah adil dan saksama untuk dibuat iaitu bahawa harta pusaka Kosit berhak kepada 1/7 bahagian tanah dan hak harta pusaka daripada 1/7 bahagian itu sama dengan 46 poin dan diukur atau ditentukan dengan rumah plaintif sebagai pusat (lihat perenggan 23).]

Notes

For cases on customary rights over land, see 10(1) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 746–791.

Cases referred to

Jagai ak Wan v Nanai ak Meluda [2008] MLJU 876, HC (refd)
Laga v Uging & Anor [1966] 1 MLJ 27 (refd)

Legislation referred to

Adat Iban Order 1993 s 183
Administration of Estates Ordinance 1948 (Cap 80) s 17, 17(c)
Evidence Act 1950 s 101(1)

Francis Teron Kadap (Francis Teron Kadap & Co Advocate) for the plaintiff.
Bernard Philip (BP Lanat & Co) for the defendant.

Rhodzariah Bujang J:

[1] The plaintiff and the defendant are blood relatives. The defendant is the plaintiff's maternal uncle and she sued him in this action for a 1/7th share in a parcel of land held under his name, described as Lot 412, Block 10 Gading — Lundu Land District ('Lot 412') which land used to belong to the defendant's grandfather cum the plaintiff's great-grandfather named Sileng ak Merai ('Sileng'). Sileng passed away sometime in 1967 without leaving any will and on 26 August 1976 the defendant was granted the letters of administration for his estate in which the said land was one out of four parcels of land listed in the schedule to the said letters. The defendant effected the transfer of the said land to himself sometime in 2014. The land is situated at Kampung Sebemban in the district of Lundu. The plaintiff in her statement of claim pleaded that as adminstratrix to her late mother's estate (who passed away on 17 January 1999) she is entitled to the said share in the land. This judgment is written after a full trial of the action.

FAMILY TREE AND DISPUTE

[2] It is opportune for me to pause here to make a brief mention of the parties' family tree and I will do so by using their first names, starting with Sileng. He was an Iban but married a Bidayuh named Dunga. They were

childless and adopted a girl named Sajah, an Iban (see the adoption certificate at p 3 of exh P2). Sajah in turn married an Iban named Miaw. They have seven children and other than the plaintiff's mother Kosit and the defendant, the other five are Garib, Joseph Akib, Latip, Jaib and Tiket. Besides Kosit, two other siblings of theirs have also passed away ie Garib and Latip. Garib's son, Sporen ak Bol ('PW3') gave evidence on behalf of his cousin, the plaintiff at the trial.

[3] The plaintiff's mother Kosit married a Bidayuh named Ginop ak Nyanang @ Jinop ak Nyanang from Kampung Stenggang, Bau who passed away on 4 May 2008. The plaintiff agreed in cross-examination that her late father was working with Public Works Department or Jabatan Kerja Raya ('JKR') in Kuching, that she was born in Kampung Stenggang and that her parents have a house in the said *kampung*. It is however not disputed that the plaintiff's parents also built a house on Lot 412 in 1985 but which the defendant contended was done with his permission. This was of course denied by the plaintiff. The house were made of belian posts and have since been renovated by the plaintiff by replacing the wooden walls with bricks and it is presently a semi-concrete house. The plaintiff admitted in cross-examination that after her mother died in 1999, her father moved back to stay in Kampung Stenggang, Bau. A fellow villager of Kampung Sebemban, one Ena ak Jimbai ('PW2') agreed in his cross-examination that when the plaintiff's mother passed away in 1999, the plaintiff was already married and she stayed with her husband at Kampung Sungai Lundu and Felda Sempadi and not at Kampung Sebemban. However, in re-examination he said despite staying elsewhere the plaintiff always come back to visit her parent's house at Kampung Sebemban.

[4] Even though the plaintiff disagreed with this but her cousin Sporen agreed in cross-examination that the defendant gave the plaintiff's mother permission to stay on Lot 412 for he said he was present when the permission was sought to build the house there. It is not disputed however that other than building the house, the plaintiff's parents and then the plaintiff and her husband also planted crops on Lot 412. Sporen did too (and of course the defendant did as well) but according to Sporen his rambutan trees planted on Lot 412 were chopped down by the defendant who also inundated his paddy field on the said land with sand. He has lodged a police report against the defendant for doing all these but the police report was not produced as evidence. The defendant in his evidence agreed that he cut down the trees because they were planted on his land but said the sand that covered the paddy field was washed down from the mountain by rain.

CUSTOMARY ENTITLEMENT TO LOT 412

[5] This entitlement is based solely on custom — that of the Ibans since Sileng died intestate. Section 17(c) of the Administration of Estates Ordinance 1948 (Cap 80) provides that the estate of such a deceased must be distributed by the administrator of his estate to his beneficiaries according to their 'shares to which they are entitled by recognized law or *custom*'. In this respect the parties have each called a witness on what the Iban custom says about the entitlement to land. The plaintiff's expert witness is Mr Gungoi ak Joll @ Barnabas who was, at the time of the trial, the Ketua Kaum or Headman of Kampung Sebemban. That of the defendant is another Iban, Mr Nicholas Bawaing ak Anggat who was the Deputy President of Majlis Adat Istiadat Sarawak and impressively had a hand in the codification of the Iban custom known as the Adat Iban Order 1993 as well as that for the Bidayuhs, Kayans, Kenyahs, amongst others. What is more he has been called to testify in court not just on the customary laws of the Ibans but also that of the Penans, Beketans and Melanaus and has written several books on Iban customs as well as give talks on the said customs. In relation to this case both witnesses have enlightened the court on two customary concept of the Ibans which have been raised by the defendant to defeat the claim of the plaintiff ie 'nguai' and 'lanting'.

NGUAI

[6] Unlike *lanting* which is specifically enacted as s 183 of the Adat Iban Order 1993, *nguai* is not and Mr Bungoi ak Joll did not give any evidence pertaining to it but Mr Nicholas Bawing did. In his words this is what that customs means:

> A. 'Nguai' is a term of the Iban whereby an Iban marries to another Iban or another race for that matter. Upon that marriage he or she chooses to reside with her husband's family or with his wife's family. During that period of the marriage the parents give permai anak or a token for him or her to bring to the new family so that the relation between her and him with that original family remains (page 73 of the notes of proceedings).

[7] He was then asked this follow-up question (also appearing at p 73 of the notes of proceedings):

> Q. What about the inheritance rights of a person who 'nguai'?
>
> A. By virtue of following her husband or his wife, he or she does not hold rights as before except for the rights of the parents in the form of fruit trees and other rights over the land but the full rights reside with her parents or siblings for instance she can use any of their land for purpose of planting if the family agrees. She can also have a share

of fruit from the fruit growth in time of fruit season. These are among the rights she still have privilege to enjoy. Other than that her rights she enjoys with that of her husband or his wife.

[8] Then in cross-examination he explained this custom of *nguai* further at p 75 of the notes of proceedings:

PUT: You specifically in your answer mentioned about 'nguai' is a case where a man or a women got married and chooses to reside with his or her wife's or husband's family. I put it to you that this concept of 'nguai' is not applicable where the couple decide to live on their own that is to say they do not stay with either of their respective family. Do you agree?

A. I agree, however the traditional concept the new couple upon the marriage normally stay with other one of the spouse's parents. However, under the modern day concept the couple can choose not to stay with both the parents. In other words they choose to stay on their own.

Q. And that is not strictly a 'nguai', correct?

A. Yes but subject to my earlier explanation.

[9] From the facts of this case, as outlined by me earlier, it is obvious despite the defendant's strong stand that Kosit is not entitled (and hence the plaintiff) to a share in Lot 412 because after marriage she has left her village to stay in her husband's village where he had built their matrimonial house there, that *nguai* is not applicable to Kosit based on the defendant's own expert's evidence above because she did not stay with her husband's family after marriage and neither did the plaintiff after hers. The evidence shows that each one of them stayed on their own with their respective spouses. What is even more telling of her attachment to her village is in fact that she has built a house on Lot 412, regardless whether it was with or without the defendant's permission or made of hardy materials because this house is evidence of an intention to reside in the village and is the evidence which strengthen my view that contrary to the defendant's assertion, Kosit did not 'nguai' when she married her husband.

LANTING

[10] Given that *lanting* has been enacted as s 183 of the Adat Iban Order 1993, it is best that I reproduce the said section here. But before that and to kill any potential argument or contention that the said Order does not apply to the Ibans of Kampung Sebemban which according to Mr Bungoi ak Joll practiced the customs of the Ibans of Sebuyau (another small town in the First Division of Sarawak), the preamble to the said Order states this:

Sarawak LN 18

THE NATIVE CUSTOMARY LAWS ORDINANCE
THE ADAT IBAN ORDER 1993
(Made under section 3 and 5)

Whereas the Tusun Tunggu of 1952 which was printed by the Government Printer and reproduced in Volume VII of the Revised Edition of the Laws of Sarawak 1958 (hereinafter referred to as the '1952 Tusun Tunggu') has by virtue of the Tusun Tunggu (Third Division) Order, the Tusun Tunggu (Fourth Division) Order and the Tusun Tunggu (Fifth Division) Order been declared to be the native customary law for all Ibans resident in the Administrative Areas known then as the Third, Fourth and Firth Divisions:

And whereas the Yang Di-Pertua Negeri in Council is satisfied, after having consulted with the Temenggongs and Chiefs of the Iban community throughout the State of Sarawak, that a general consensus of opinion of the Iban community in the State of Sarawak favours an amendment to the 1952 Tusun Tunggu and *to make it applicable to all Ibans resident in the State of Sarawa*k.

Now, therefore, the Yang Di-Pertua Negeri in Council, in exercise of the powers conferred by sections 3 and 5 of the Native Customary Laws Ordinance, has made the following Order. (Emphasis added.)

[11] I will now reproduce s 183 below:

183 This is an item or items of valuable property which may be chosen by the father or mother before the property is divided to the members of the bilik-family. It may be an old jar or gong, or a rubber garden or a piece of land, or any other valuable property of their choice. It is inherited by whoever cares for him or her until the end of her or his life.

[12] The defendant has pleaded in para 4 of his amended defence which he repeated in his witness statement that this Lot 412 is his sole entitlement because Sileng adopted him when he was eight years and brought him up as his own son after his mother's death and that of his paternal grandmother ie Sileng's wife. Therefore, he said under Iban custom (which he did not named in the pleading but in his witness statement that custom is identified as *lanting*), only he is entitled to inherit his properties because he cared for Sileng in his old age up till Sileng's death in 1967.

[13] The parties' experts have elaborated on this custom in their respective evidence. Mr Bungoi ak Joll explained so in his answers No 11 of his witness statement:

1. Firstly, based on the adat that I know of and based on what we had been briefed during courses on Adat Iban Sarawak recently, a person who takes care of the parents (carer) until they died is entitled to the 'Lanting' of the deceased parent. 'Lanting' is basically the belongings and those properties

such as the house and the lands on which the house is built including the compound. It also includes all belongings that the deceased usually take care and love. What the deceased is said to be usually take care are like orchard, land where he did his farming, fruit trees, house where he/she live and such other chattels that he or she loved to take care. In short, 'Lanting' are those properties that the deceased gave more attention and thus special to him/her.

2. The carer is entitled to have the 'Lanting'. In respect of other properties that is not considered 'Lanting', the same must be distributed fairly among the other deserving beneficiaries. What is meant by fairly is necessarily equal in size but based on whether the beneficiaries had got their house on it, or planted crops or had cultivated the said land or had spent labour on that land.

[14] He then weighed in his own opinion on whether Lot 412 is Sileng's *lanting* in the subsequent paragraphs as follows:

3. The said Lot 412 at the time of Sileng death was empty land. Not planted with any fruit trees or not usually visited by Sileng. As such, Lot 412 is not the 'Lanting' of Sileng.

4. Therefore, based on Adat Iban, the defendant cannot claim exclusive rights over it. He must distribute the same as among his siblings on the principle of who had fruit trees or house of spent some labour on or cultivated the said lands.

5. On the basis of the above, I am of the view that Kosit rightfully be given her rights and share in Lot 412 as she had her house on the said land and she had cultivated the land for so many decades and had planted so many crops and fruit trees. I myself used to help her during paddy planting season in the past.

[15] Then in cross-examination, Mr Bungoi ak Joll qualified his evidence above by stating pre-conditions for the validity of the *lanting*. He said an announcement of it must be made in the presence of the village elders and the Ketua Kaum would then record it down before signing that statement together with the village elders. That statement or letter as he call it would be proof of the *lanting* (see lines 12–17 at p 43 of the notes of proceedings). In his re-examination he said there was no such letter in respect of Sileng's *lanting*.

[16] Mr Nicholas Bawing's explanation of *lanting* echoes the words in s 183. He said, at lines 18–23 at p 73 to line 2 at p 74 of the notes of proceedings) as follows:

In respect of 'lanting' which spelled out in the Adat Iban section 183, 'lanting' is an item or items of valuable property which may be chosen by the father or mother before the property of the family is to be divided to the members of the family. 'Lanting' can be in the form of a jar or gong or fruit garden or a piece of land. The 'lanting' is to be given to one of them who takes care of the person (either the father

or the mother) until the end of his or her life and until the burial. 'Lanting' has been in Iban Adat which they have practiced since time in memorial.

[17] Then in cross-examination he confirmed the pre-requisite of making that announcement as testified by Mr Bungoi ak Joll which he calls 'beterang'. I reproduce below the excerpt from his evidence including Mr Francis Teron's questions to him as they appear at line 15 at p 75 to line 14 at p 76:

Q. On 'Lanting', is it correct for me to say that when allocating 'lanting' to the deserving carer, it has to be done in the presence of Tuai Rumah according to section 183?

A. Under that section 183, 'beterang' is done before the Tuai Rumah or the community at large in that particular village. However, 'beterang' can be done only among members of the family and this practice is common among the Iban. The 'lanting' that is being allocated to whoever is made known to the Tuai Rumah, to the villagers and perhaps to the members of the family. In most cases if there is no dispute over this 'lanting', it means the members of the siblings or members of the family they agreed over the allocation of the 'lanting' to whoever it is already allocated to.

Q. What 'beterang' means?

A. The word 'beterang' means an announcement or made known literally in English.

Q. During 'beterang' does the note of proceedings 'beterang' normally recorded in writing?

A. As far as I could remember 'beterang' is normally done orally in front of the crowd or the people present during the occasion. However, there is no harm if the proceeding or the 'beterang' is to be recorded. So far there is no hard and fast rule over this matter.

[18] Therefore, what I can gather from the evidence of these two gentlemen is that for *lanting* to operate in favour of a person or rather the defendant in this case, the pre-requisite of an announcement of such a bequest by the owner of the property made in favour of a particular beneficiary or beneficiaries must be made before the village elders or headman. That announcement may or may not be recorded in writing but it must be made. Such a condition of course makes perfect sense and promotes harmony amongst the beneficiaries or descendants of the deceased for otherwise there would be squabbles between them as evidenced in this case. Whilst I have no reason to dispute and therefore accept the 'adoption' of the defendant by Sileng or that he was Sileng's primary caregiver, his claim of being the sole beneficiary of Sileng's estate based on *lanting* have been demolished by none other than his own expert witness. With Mr Nicholas Bawing's credentials and whose evidence supported that of Mr Bungoi ak Joll's on the pre-requisite or condition for the operation of

lanting, I have no other choice but to find that the defendant has failed in his defence of the plaintiff's claim because he has not adduced an iota of evidence to show compliance with the pre-requisite of *lanting* as stated above.

[19] Mr Bernard Philip for the defendant in his submission raised the issue that the plaintiff has not discharged the burden of proof under s 101(1) of the Evidence Act 1950 but with due respect, it is his client who failed to prove his defence on a balance of probability. The plaintiff, on the other hand has discharged that burden in the presence of the undisputed facts that Sileng died intestate and that her late mother Kosit was one of his grandchildren who has built a house on Lot 412 and with the defendant's full knowledge and concurrence. Given that familial relationship between the parties which family tree I have traced at the beginning of this judgment, Kosit as too her other siblings and the defendant of course all have beneficial interest in Sileng's estate. Of course being the administratrix of Kosit's estate the plaintiff has the legal capacity to mount a claim on that part of Lot 412 where Kosit had built her house.

[20] Mr Francis Teron had quoted in his written submission an apt decision of another Iban case on intestacy and inheritance ie *Jagai ak Wan v Nanai ak Meluda* [2008] MLJU 876 which in turn quoted from *Laga v Uging & Anor* [1966] 1 MLJ 27 where Lee Hun Hoe J (as His Lordship then was) held that eventhough the estate of a Dayak intestate is to be distributed amongst his beneficiaries according to their custom of inheritance but the Administration of Estates Ordinance is still applicable to them. These case authorities further strengthen my view that the plaintiff has not mounted this action in vain against the defendant.

ORDER TO BE GRANTED

[21] In her amended statement of claim the plaintiff has prayed for the following declaration:

a. A declaration that the plaintiff or the estate of Kosit anak Miaw is entitled to the 1/7th share of the said Lot 412.

b. That the defendant do effect ~~to~~ transfer of the said ~~1/6th~~ 1/7th share of the said land to the plaintiff in her capacity as the Administratrix of the estate of Kosit anak Miaw (f) within fourteen (14) days from the date of Court Order failing which the Superintendent of Land and Survey shall ~~will~~ transfer the same accordingly ~~to the estate of Kosit anak Miaw (f)~~.

c. That the defendant to pay for all the cost for the transfer including legal fees, and stamp duties (if any) and all such cost necessarily incurred arising from or such transfer.

[22] However in concluding his written submission Mr Francis Teron has changed that first prayer to this:

> The 1/7th share or equivalent to 46 points (ie 14.28% out of 3.25 acre of Lot 412) to be determined on the ground to include the site of the said house and to include the compound which contains the fruit trees and crops.

[23] Since it is clearly stated in the intitulement of the action that the plaintiff is suing on behalf of the estate of her late mother Kosit and that the subject matter of the action is Lot 412 and s 17 of the Administration of Estates Ordinance 1948, the first prayer made in the alternative in the amended pleading is a fair and equitable one to make ie that the estate of Kosit is entitled to the 1/7th share of the land. However, for certainty and to prevent further dispute later as to the size of it, I am going to adopt part of the prayer as submitted in Mr Francis Teron's written submission as reproduced above ie that the estate of Kosit's entitlement of 1/7th share is equivalent to 46 points and that is be measured or determined with the plaintiff's house as the epicentre. The second prayer in the amended statement of claim is allowed but with the cost of the transfer to be borne equally by both the plaintiff and defendant. As for costs of the trial at RM10,000 as suggested by Mr Francis Teron in his written submission, that is indeed a very reasonable one given the relatively simple issues raised at and the short length of the trial and I would so order but subject to payment of the allocatur fee.

Plaintiff's claim allowed with costs of RM10,000 subject to payment of allocatur fee.

Reported by Dzulqarnain Ab Fatar